IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 24324 of 2006(U)

MC.313/2005 of FAMILY COURT, MALAPPURAM

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PETITIONER:

SALAM, S/O. BAPPUTTY,
KORACHINPURACKAL, KORAMAN KADAPPURAM,
THANUR P.O. TIRUR TALUK.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:

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1. AYISHA, D/O.POKKER, MAYINPURAKKAL,
KORAMAN KADAPPURAM, THANUR P.O. THIRUR TALUK.

2. SABEER AHAMMED, S/O.AYISHA(MINOR),
REPRESENTED BY HIS NATURAL GUARDIAN, AYISHA,
D/O.POKKER, MAYINPURAKKAL, KORAMAN KADAPPURAM,
TANUR P.O. TIRUR TALUK.

BY GOVERNMENT PLEADER SRI.GIKKU JOSEPH
ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:A TRUE COPY OF THE M.C.NO.313/05 ON THE FILE OF FAMILY COURT, MANJERI DATED 21.05.2005.

/TRUE COPY/

R.BASANT, J.

W.P.C.NO.24324 OF 2006

Dated this the 4th day of December, 2006.

JUDGMENT

The petitioner is the respondent in a claim for maintenance under Section 125 Cr.P.C. There is no marriage between the petitioner herein and the mother of the claimant. It would appear that the allegation is that the mother of the claimant was raped and the child was born in such relationship. The dispute regarding the paternity was raised. The parties got the D.N.A test conducted. The D.N.A test was answered against the petitioner. There upon the claimant submitted that she has no further evidence. The report of the learned Judge of the Family Court shows that the petitioner herein and his counsel had also submitted that they have no evidence to adduce. The matter was heard and the petition was posted for orders to 18.09.2006. It is at that stage, the petitioner came before this Court on 12.09.2006 and filed this petition. Orders of stay were issued and the claim under Section 125 Cr.P.C remains without disposal even now.

2. The learned counsel for the petitioner submits that the petitioner wants evidence to be adduced. Even assuming

that an erroneous submission had been made before the learned Judge of the Family Court that the petitioner has no evidence to adduce, humane and reasonable view may be taken and the petitioner may be granted one further opportunity to adduce evidence on his side, it is prayed.

3. I find no reason not to accept the report of the learned Judge that the petitioner and his counsel had reported that they have no evidence to adduce. Be that as it may, I am satisfied that interests of justice will be served ideally by granting the petitioner a further opportunity to adduce all such evidence that he wants to adduce on the next date of posting subject to appropriate conditions. In the peculiar facts and circumstances of this case, I am satisfied that such course shall cater ideally to the interests of justice.

4. In the result, this Writ Petition is allowed. The petitioner shall be granted an opportunity to adduce all such evidence as the petitioner wants to adduce on the next date of posting to be fixed by the learned Judge of the Family Court, on condition that the petitioner pays/deposits before the court below an amount of Rs.500/- (Rupees Five hundred only) as cost to the claimant within 15 days from this date. It is made clear

that on such date to be stipulated by the learned Judge of the Family Court, the petitioner must be ready with all witnesses whom he wants to examine.

R.BASANT
JUDGE

rtr/